

Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-4683
Fax: 571-273-0042

Paper 52
Filed: December 5, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Merck and Co., Inc.
Junior Party
(U.S. Patent Application 10/587,601),

v.

Japan Tobacco Inc.
Senior Party
(U.S. Patent 7,211,572).

Patent Interference No. 105,655 (MPT)
(Technology Center 1600)

Before: SALLY GARDNER LANE, SALLY C. MEDLEY, and MICHAEL P. TIERNEY, Administrative Patent Judges.

TIERNEY, Administrative Patent Judge.

Judgment – Bd.R. 127

A conference call was held on November 24, 2008 at approximately 2:00 p.m., including:

1. Eugene Rzucidlo, counsel for Merck,

1 2. Jerry Voight, counsel for Japan Tobacco, and

2 3. Michael Tierney, Administrative Patent Judge.

3 Merck's sole substantive motion, Merck's Motion 1 to redefine the
4 interference, was granted in the Order, dated November 18, 2008, Paper 50 and the
5 interference was redeclared with a new Count, Count 2. (Order, Paper 50, and
6 Redecoration, Paper 51).

7 Counsel for Merck represented during the conference call that Merck will
8 not be filing a priority statement and will not be filing any further motions in this
9 interference. Counsel for Merck did not object to entry of adverse judgment based
10 on Merck's abandonment of the contest. 37 C.F.R. 41.127(b)(4).

11 It is:

12 **Ordered** that judgment be entered against Merck for Count 2, the sole
13 count in interference (Paper 51, p. 2).

14 **Further Ordered** that claims 24-39 of Merck's involved application,
15 U.S. Application 10/587,601, be FINALLY REFUSED, 35 U.S.C. §135(a).

16 **Further Ordered** that a copy of this judgment be entered in the
17 administrative records of the involved Japan Tobacco U.S. Application 11/255,605
18 and Merck U.S. Application 10/587,601.

1 cc (via electronic filing):

2
3 Attorney for Merck and Co., Inc.

4
5 Eugene C. Rzucidlo, Esq.
6 HUNTON & WILLIAMS, LLP
7 200 Park Avenue
8 New York, NY 10166
9 Tel: 212-309-1414
10 Email: gcr@hunton.com

11
12 Robert M. Schulman, Esq.
13 HUNTON & WILLIAMS, LLP
14 1900 K Street, NW
15 Washington, DC 20006
16 Tel: 202-955-1500
17 Email: rschulman@hunton.com

18
19 Attorney for Japan Tobacco, Inc.:

20
21 Jerry D. Voight, Esq.
22 Wesley B. Derric, Esq.
23 FINNEGAN, HENDERSON, FARABOW,
24 GARRETT & DUNNER LLP
25 3300 Hillview Avenue
26 Palo Alto, CA 94304-1203
27 Tel: 650-849-6600
28 Email: jerry.voight@finnegan.com
29 Email: Wesley.derrick@finnegan.com